IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 1978 to 1981 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER - Appellant(s)
Versus
AMRUTBHAI BHIKHABHAI PATEL & 1 - Defendant(s)

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Appearance :
Mr.S.S.Patel,learned AGP for Appellant(s) : 1,
MR AJ PATEL for the claimants in First Appeal Nos.1978 to 1980 of 2006

Mr.Sunil K.Shah for the claimants in First Appeal No.1981/06.

Mr.A.J.Desai for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 30/06/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in First Appeal No.1978 to 1980 of 2006. Mr.Sunil K.Shah, learned counsel, waives service of notice on behalf of the claimants in First Appeal No.1981/06. Mr.A.J.Desai, learned counsel, waives service of notice on behalf of respondent No.2 in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act 1894 ('the Act' for short) read with Section 96 of the Code of Civil Procedure, 1908 the appellants have challenged the legality of common judgment and award dated July 5,2004 rendered by the

4th Extra Assistant Judge and Special Judge (LAR),Ahmedabad (Rural) Navrangpura, Ahmedabad in Land Acquisition Case No.439/99 to Land Acquisition Case No.442/99 by which the claimants are awarded additional compensation of Rs.165/- per Sq.Mt., over and above the compensation awarded by the Land Acquisition Officer at the rate of Rs.8.17 Ps. per Sq.Mt. for their acquired lands. A proposal was received by the State Government to acquire agricultural lands of village Adalaj, Taluka and District Gandhinagar for the purpose of Narmada Canal. On consideration of the said proposal, the State Government was satisfied that the lands of village Adalaj were likely to be needed for the said public purpose. Therefore, Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on November 23, 1995. The lands owners were served with notices. They objected to the proposed acquisition. After considering their objections, a report under Section 5A(2) of the Act was forwarded by the Land Acquisition Officer to the State Government. On perusal of the said report, the State Government was satisfied that lands of village Adalaj, specified in the Notification published under Section 4(1) of the Act, were needed for the public

purpose of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on April 25, 1996. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.300/- per Sq.Mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by award dated March 26, 1997 offered compensation to the claimants at the rate of Rs.8.17 Ps. per Sq.Mt. The claimants were of the view that offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted written applications requiring the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just compensation payable to them. Accordingly references were made to District Court, Ahmedabad (Rural), which were numbered as Land Acquisition Case Nos.439 to 442 of 1999. On behalf of the claimants witness Jijaybhai Rambhai Patel, who was claimant in Land Acquisition Case No.439/99, was examined at Exh.18. Over and above stating that the lands acquired were highly fertile and that each claimant was earning net

agricultural income of Rs.32,000/- to Rs.40,000/- per Vigha per year, the witness asserted that in view of the potentiality of the lands, the claimants should be awarded compensation at the rate of Rs.300/- per Sq.Mt. The witness also produced previous award of the Reference Court at Exh.15, which was rendered in Land Acquisition Reference Case No.1346/96 relating to the lands of village Adalaj itself. It may be mentioned that by the said Award, Reference Court had awarded total compensation of Rs.122/- per Sq.Mt. and, therefore, feeling aggrieved by the said award, the acquiring authority had preferred Appeal being First Appeal No.1471/2001 in the High Court, which was dismissed vide judgment dated July 17,2001. Copy of the judgment of the High Court rendered in first Appeal No.1471/2001 was produced by the witness for the claimants at Exh.16. The witness for the claimants also produced another award of the Reference Court at Exh,17, which was rendered in Land Acquisition Reference No.456/98 relating to lands of village Adalaj wherein the Reference Court had awarded total compensation of Rs.168/- per Sq.Mt. to the claimant. In cross examination by the learned District Government Pleader, it was mentioned by the witness that when the lands were acquired population

of the village was 7000. However, the suggestion made by the learned G.P. that compensation was fixed by the Land Acquisition Officer after considering the evidence adduced before him was emphatically denied by him. In the cross examination it was also stated by the witness that the lands acquired were at a distance of 2 Kms. away from the Highway.

On behalf of the acquiring authority no witness was examined at all. On appreciation of evidence adduced by the claimants, the Reference Court was of the view that previous award of the Reference Court produced at Exh.17, which was rendered in Land Acquisition Reference Case No.456/98 relating to the lands of village Adalaj was a relevant piece of evidence on the basis of which compensation payable to the claimants could be computed. Placing reliance on the said award, the Reference Court has awarded additional compensation of Rs.165/- per Sq.Mt. by common judgment and award dated July 5,2004, giving rise to the instant appeals.

3. This court has heard Mr.S.S.Patel,learned AGP for the appellants as well as Mr.A.J.Patel, learned counsel for the claimants in First Appeal No.1978 to

1980 of 2006 and Mr.Sunil K.Shah,learned counsel for the claimants in First Appeal No.1981/2006 as well as Mr.A.J.Desai,learned counsel for the respondent No.2 at length and in great detail. This Court has also considered the documents produced by the learned counsel for the parties for perusal of the Court. From the record of the case, the following admitted facts emerge:

(a) The claimants were the owners of the lands acquired by the State Government, (b) The lands in question were situated in the sim of village Adalaj, (c) The State Government acquired the lands for the public purpose of construction of Narmada Canal, (d) The State Government had published Notification under Section 4(1) of the Act in the Official Gazette on November 23,1995,

4. After giving opportunity of hearing, the Land Acquisition Officer offered compensation to the claimants at the rate of Rs.8.17 Ps.per Sq.Mt. by his award dated March 26,1997. The testimony of witness Jijaybhai Rambhai Patel recorded at Exh.18 indicates that Adalaj village is main center of Gandhinagar District and there is famous place known as “Adalaj Vav”, which is situated near the acquired lands. His

evidence also shows that there is G.E.B.Office, Police Station, Hotel and other societies near the acquired lands. The testimony of the witness examined by the claimants makes it very clear that Adalaj is a developing area, where even FCI godown is also situate and that the lands acquired had potentiality for being used for commercial purposes and industrial purposes. Though it was claimed by the witness that each claimant was earning agricultural income of Rs.32,000/- to Rs.40,000/- per Vigha per year, no evidence could be adduced by the claimants to substantiate the said claim. It is relevant to notice that the compensation was never claimed on yield basis. During the course of tendering evidence, the witness for the claimants produced 2 previous awards of Reference Court i.e. Exh.15 and Exh.16 in support of the claim for enhanced compensation. Exh.15 is award of the Reference Court rendered in Land Acquisition Reference Case No.1346/96 relating to the lands of village Adalaj itself. It indicates that in the said case lands were acquired from village Adalaj pursuant to publication of Notification under Section 4 of the Act on August 1,1990 for the public purpose of construction of Narmada Canal wherein the Land Acquisition Officer had awarded compensation to the

claimants at the rate of Rs.2.40 Ps. per Sq.Mt. Feeling aggrieved, the claimants had sought references and the Reference Court had awarded additional compensation of Rs.122/- per Sq.Mt, by award dated December 15, 1999. The testimony of the witness examined by the claimants further shows that the award of the Reference Court rendered in Land Acquisition Reference Case No.1346/96, relating to the lands of village Adalaj, was challenged by the acquiring body before the High Court in First Appeal No.1471/2001 and that the appeal was dismissed by the High Court, which is quite evident from Exh.16 produced by him. The witness further produced previous award of the Reference Court rendered in Land Acquisition Reference Case No.456/98 relating to the lands of village Adalaj which is at Exh.17. It indicates that therein lands of village Adalaj were acquired pursuant to publication of Notification under Section 4(1) of the Act on August 24,1995. The Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.18/- per Sq.Mt. and the said compensation was enhanced by the Reference Court by awarding additional compensation of Rs.150/- per Sq.Mt. Thus, in all the claimants were awarded compensation of Rs.168/- per Sq.Mt. vide judgment and

award dated December 5,2002. In this case, the Reference Court has awarded in all compensation to the claimants at the rate of Rs.173.17 Ps.per Sq.Mt. on the basis of Exh.17 i.e. previous award of the Reference Court rendered in Land Acquisition Reference Case No.456/98. As indicated earlier, in Land Acquisition Reference Case No.456/98 the Reference Court had awarded compensation at the rate of Rs.168/- per Sq.Mt. and, therefore, this Court is of the opinion that the Reference Court was not justified in awarding additional compensation at the rate of Rs.165/- per Sq.Mt. It is well settled that previous award of the Reference Court relating to the lands of the same village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of evaluating market value of the lands acquired subsequently from the said village. Here in this case, the claimants have based their claim for enhanced compensation on Exh.17, which is previous award of the Reference Court in Land Acquisition Reference Case No.456/98. Exh.17 indicates that lands of village Adalaj were acquired for the public purpose of Narmada Canal pursuant to publication of Notification under Section 4(1) of the Act on August 24,1995 whereas in the instant case

Notification under Section 4(1) of the Act was published in the Official Gazette on November 23,1995. Thus, there is no manner of doubt that the previous award would furnish good guidance to the Court for the purpose of determining market value of the lands acquired in the instant case. On the basis of the said award, in all, the claimants would be entitled to get compensation at the rate of Rs.168/- per Sq.Mt. and not Rs.173.17 Ps. per Sq.Mt., as awarded by the Reference Court. Therefore, the appeals filed by the State Government will have to be allowed in part.

5. For the foregoing reasons, all the appeals partly succeed. It is held that the claimants would be entitled to compensation at the rate of Rs.168/- per Sq.Mt. for their acquired lands and not at the rate of Rs.173.17 Ps. per Sq.Mt., as held by the Reference Court. To that extent, the award of the Reference Court dated July 5,2004 is hereby modified. It is clarified that the rest of the award is not interfered with at all by this Court in the instant appeals. The appeals are accordingly partly allowed to the extent indicated hereinabove. There shall be no order as to costs.

The Registry is directed to draw the decree in terms of this judgment.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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